

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THOMAS POWELL, a/k/a Tommy,

Defendant.

No. 09-CR-4045-DEO

ORDER
ACCEPTING REPORT AND
RECOMMENDATION CONCERNING
GUILTY PLEA

I. INTRODUCTION AND BACKGROUND

On December 16, 2009, a one count Superseding Indictment (Docket No. 136) was returned in the above-referenced case.

Count 1 of the Superseding Indictment charges that between about January 2007 and continuing through August 2009, in the Northern District of Iowa, defendant Thomas Powell, a/k/a Tommy, and other named defendants, did knowingly and unlawfully combine, conspire, confederate, and agree with each other and with other persons, and known and unknown to the Grand Jury,

1. to manufacture 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, a Schedule II controlled substance, or 50 grams or more of actual (pure) methamphetamine, a Schedule II controlled substance,

in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(A), 851, and;

2. to manufacture 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine, a Schedule II controlled substance, or 5 grams or more of actual (pure) methamphetamine, a Schedule II controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(B), 851, and

This was in violation of Title 21, United States Code, Section 846.

On December 15, 2009,¹ defendant Thomas Powell, a/k/a Tommy, appeared before Chief United States Magistrate Judge Paul A. Zoss and entered a plea of guilty to Count 1 of the

¹This Court notes that Defendant Powell entered his plea of guilty on December 15, 2009, prior to the date the Superseding Indictment was filed, December 16, 2009. However, United States Magistrate Judge Paul A. Zoss entered an Order on December 30, 2009 (Docket No. 183), setting out that the Plaintiff indicated in its Statement Pursuant To Local Criminal Rule 7 (Docket No. 146) that the only change between the original Indictment and the Superseding Indictment is the addition of a new defendant in Count 1. Accordingly, the Court ordered that the guilty plea entered by Thomas Powell to the Indictment is also applicable to the Superseding Indictment.

Indictment. In the Report and Recommendation and supplemental Order (Docket Nos. 129, 12/15/2009; and Docket No. 183, 12/30/2009), Chief United States Magistrate Judge Paul A. Zoss recommends that defendant Thomas Powell's guilty plea be accepted. No objections to Judge Zoss's Report and Recommendation and supplemental Order were filed. The Court, therefore, undertakes the necessary review to accept defendant Thomas Powell's plea in this case.

II. ANALYSIS

A. Standard of Review

Pursuant to statute, this Court's standard of review for a magistrate judge's Report and Recommendation is as follows:

A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate [judge].

28 U.S.C. § 636(b)(1). Similarly, Federal Rule of Civil Procedure 72(b) provides for review of a magistrate judge's Report and Recommendation on dispositive motions and prisoner petitions, where objections are made as follows:

The district judge to whom the case is

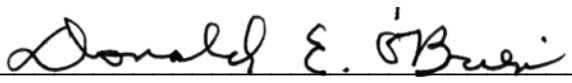
assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommendation decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

FED. R. CIV. P. 72(b).

In this case, no objections have been filed, and it appears to the Court upon review of Chief Magistrate Judge Zoss's findings and conclusions that there are no grounds to reject or modify them.

IT IS THEREFORE HEREBY ORDERED that this Court accepts Chief Magistrate Judge Zoss's Report and Recommendation (Docket No. 129), and accepts defendant Thomas Powell's plea of guilty in this case to Count 1 of the Superseding Indictment filed on December 16, 2009, (Docket No. 136).

IT IS SO ORDERED this 11th day of February, 2010.


Donald E. O'Brien, Senior Judge
United States District Court
Northern District of Iowa